

ASX and ASIC Listed Companies Conference

Disclosure and the role of ASX

Eric Mayne
Chief Supervision Officer

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Presentation outline



- ASXMS Education and Research Program
- Market integrity
- Issuers
- Continuous disclosure – the rule
- ASX surveillance and monitoring activities
- Case studies
- Enforcement
- Recent guidance
- Case studies

ASXMS Education and Research Program



- Fines and settlements from disciplinary tribunals to be put towards compliance education and research
- Programs tailored for listed companies and market participants. \$240,000 available for FY08.
- Education executive appointed and webpage set up
- Ideas and feedback welcome

Market integrity



- Market integrity is key to the long-term sustainability of ASX's business
- ASX has a statutory obligation, assessed annually by ASIC, to ensure that its markets are fair, orderly and transparent

Issuers



- Supervises compliance with the Listing Rules
- Each listed company will be allocated a Home Branch and an Issuers Adviser as its contact point
- ASX works closely with listed entities to provide the support and guidance necessary to ensure compliance with its rules

Continuous disclosure



Listing Rule 3.1

“Once an entity is or becomes +aware of any information concerning it that a reasonable person would expect would have a material effect on the price or value of the entity’s +securities, the entity must immediately tell ASX that information.”

Continuous disclosure – key terms

“Aware” – systems to ensure that information is considered for disclosure on a timely basis

“Material” – Company’s role to determine materiality

“Confidential” – test is factual

“False Markets” - Listing rule 3.1B - A company must disclose information needed to correct or prevent a false market

Continuous disclosure – key terms

“Confidential”

- A matter of fact
- If material information is no longer confidential, immediate disclosure is required
- Disclosure is required even if the entity has entered into confidentiality arrangements and / or the information has come from another source

ASX surveillance



- Surveillance analysts watch trading in all stocks for unusual price and / or volume movements
- If an alert is generated, the analyst will seek to explain it

ASX monitoring activity – price query



- Price query issued
- Rapid turn-around
- Query and response released to the market
- Market benefits through:
 - enhanced disclosure
 - efficient price discovery
 - minimisation of market speculation
 - a fully informed and orderly market
 - increased investor confidence

ASX monitoring activity – “aware” letters



- “When did you become aware..”
- Designed to ascertain if disclosure was within timeframe dictated by Listing Rule 3.1
- ASX letter and response released to the market

ASX monitoring activity – statistics



	FY 06/07	07/08 (to May)
Company announcements	117,877	121,940
Sensitive announcements	29,298	30,645
Issuer queries	1,580	1,606
Price queries	620	413
Announcements made following all queries	975	1049

Enforcement



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- ASX refers serious breaches to ASIC
- FY06/07 18 disclosure related referrals, FY07/08, 23 disclosure related referrals
- Civil or criminal proceedings or infringement notice
- Offence to provide or allow provision of false and misleading information to ASX

Recent initiatives – companies updates

ASIC and ASX joint releases in the form of Companies Updates on:

- 28 February 2008: Trading halts and suspensions
- 29 February 2008: Listing Rule 3.1 – Financing arrangements and director margin loans
- 27 June 2008: directors' interests notices

Recent initiatives – trading halts and suspensions

Trading halts and suspensions

- Disclosure management tools
- Requests for suspension under Listing Rule 17.2 (as well as requests for trading halts under Listing Rule 17.1) be made in writing for release to the market and include information set out in the Listing Rules

Trading halts and suspensions – statistics



	FY 06/07	07/08 (to May)
Trading halts*	48	35
Suspensions*	4	7

* Disclosure related

Recent initiatives – financing and director margin loans



Listing Rule 3.1 – Financing arrangements and director margin loans

- Material aspects of financing arrangements
- Material aspects of director margin loans

Recent initiatives – director trading



Director trading

- Study and continuing monitoring and enforcement

Case study 1: Mining results



- Company X's opening price on Mon was 19c, close 20c. On Tues, opened at 21c closed at 30c, intra-day high of 35c, volume double the usual. ASX contacted the company and sent a price query. Coy X's response to the price query indicated that an announcement regarding assay results was pending and requested a trading halt. On Thur, Coy X announced significant assay results for gold. Following announcement, price opened at 54c and closed at 41c for the day.

Case study 1 cont'd



- ASX actions:
 - ASX sends “aware” letter on Fri. Response to aware letter indicates company became aware of results on Tuesday morning.
 - ASX sends a letter (not for release to the market) asking Coy X to identify who knew of the assay results and provide a chronology of events regarding the information
 - ASX Issuers refers Coy X to ASIC for potential breach of listing rule 3.1, gives information provided by Coy X in response to confidential letter to ASX Surveillance who review trading and consider whether a referral to ASIC on insider trading may be warranted

Case study 1 cont'd



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- What should Coy X have done?
 - as soon as it became aware of the assay results, make an announcement unless it fell within a carve-out (eg information was incomplete and confidentiality was maintained) and put in place procedures to monitor share price and media and be ready to request trading halt
 - expedite assay results confirmation process
 - ensure confidentiality arrangements are in place
 - issue warning to all staff and contractors involved that coy is closely monitoring share trading
 - as soon as indication of loss of confidentiality, immediately request a trading halt;
 - if Coy X requested a trading halt and announcement cannot be made within two days, request suspension.

Case study 2: financial results



- Coy A has delivered 10% pa increase in profit each year for the last 5 years. This year the result is announced and profit is down by 12% on previous year. There has been no warning of this variation in result. Share price falls by 15% on day of results. The day after results, an appendix 3Y is released to the market showing a director of the company traded 10 days before the announcement of results.

Case study 2 cont'd

- ASX actions:
 - ASX contacts the company and then sends an “aware” letter on day of results. Response indicates that company was aware for some time that results would be lower than previous year. The letter and the response are released to the market.
 - ASX sends letter regarding Appendix 3Y on the day after the results asking for explanation of breach of listing rule 3.19A. The letter and the response are released to the market.
 - ASX Issuers refers Coy A to ASIC for potential breach of listing rule 3.1 and refers the matter internally to ASX Surveillance to consider a potential insider trading referral to ASIC relating to the director

Case study 2 cont'd



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- What should coy A have done?
 - At first indication that results would be lower, consider whether announcement is necessary
 - Take steps to ensure that at time of announcement a range or percentage is given – not “results will vary significantly” (Paragraphs 93-95 of GN 8)
 - If necessary expedite results announcement process
 - Ensure trading policy:
 - Prohibits insider trading (Coy A may also consider prohibiting trading for the period during which results are being prepared eg from end of financial period until results announced);
 - requires notification to company secretary and approval by Chair of any director trading
 - Ensure directors and staff are aware of any trading blackout periods (eg email notification to all staff and directors)
 - Ensure that each director signs contract in form of letter in GN 22 or otherwise, agreeing to inform coy secretary of any trading in shares of company within 3 business days. Ensure procedures in place to make this happen and also include checks and balances (eg Chair can notify coy secretary if he/she approves a trade or share registry can notify of any director/staff trade)
 - Ensure Appendix 3Y lodged within 5 business days of trade

Case study 3: transaction



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- On Thursday Coy C's share price ranges from \$1.21 to \$1.23. On Friday morning a press article speculates that Coy C is anticipating a significant contract for supply of services. The company is contacted by ASX but states that it is in compliance with listing rule 3.1 and has nothing to announce. ASX accepts this explanation. During trading on Friday the share price climbs to \$1.48. ASX contacts Coy C again and sends a price query. Coy C requests a trading halt. On Monday Coy C announces a contract with a subsidiary of XYZ Coy that will secure it \$25m p.a revenue for the next 5 years and result in a 15-20% increase in profit over that period. Coy C's share price rises to \$1.50 after announcement.

Case study 3 cont'd



- ASX actions:
 - In its usual process ASX contacted the company after the media article appeared on Friday morning. Often this process elicits an announcement or a request for a trading halt. In this instance the company stated that it had nothing to announce. ASX accepted that explanation.
 - An ASX Surveillance alert based upon the price movement leads to further contact with company and the issue of a price query.
 - ASX sends an aware letter on Monday. The response indicates that an MOU was signed 2 months before announcement but the deal was substantially finalised 2 days before the announcement with final board approval due on Friday. Coy A purported to rely on the “incomplete proposal” carve-out
 - ASX Issuers refers Coy A to ASIC for a potential breach of listing rule 3.1

Case study 3 cont'd



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- What should coy C have done?
 - At time of signing MOU, consider whether LR 3.1 would require the announcement of the terms of the MOU. If not, Coy A should at least enter into arrangements with other party to make 'holding announcement' between the signing of the MOU and the finalization of the deal if necessary. Ensure expedited announcement approval process is in place (eg CEO can make announcement without board approval if needed to prevent a false market, have a draft announcement ready)
 - Consider confidentiality arrangements – agreements to be signed by advisers and keep register of "insiders" on the deal
 - Ensure press and share price are closely monitored during the period
 - If there is an indication that confidentiality is lost (eg media article or price movement) consider either a holding announcement or a trading halt depending upon the timing of the loss of confidentiality
 - If necessary hold expedited board meeting to do final approval or authorise a board subcommittee to approve final agreement.
 - Have announcement ready for immediate release following the final approval

Conclusion

- Effective disclosure is critical not only to the success of ASX as a market operator but to the success of your company in building investor support
- ASX is there to support and ensure your compliance with the Listing Rules. Use your home branch for consultation on compliance and disclosure issues

Conclusion (cont'd)



ASX

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- Ensure that the Board and staff of your company have a full understanding of Listing Rules and recent company updates